No. 75-104

In the Supreme Court of the United States

OCTOBER TERM, 1976

UNITED JEWISH ORGANIZATIONS OF WILLIAMSBURGH, INC., ET AL., PETITIONERS

v.

HUGH L. CAREY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

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INDEX

219-020—76——1

CITATIONS

Cases:

Cases—Continued

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 7a–50a) is reported at 510 F. 2d 512. The opinion of the district court (Pet. App. 53a–58a) is reported at 377 F. Supp. 1164.

JURISDICTION

The judgment of the court of appeals (Pet. App. 5a–6a) was entered on January 6, 1975, and a timely petition for rehearing and suggestion of rehearing *en banc* were denied on February 27, 1975 (Pet. App.

3a–4a). On May 19, 1975, Mr. Justice Marshall extended the time within which to file a petition for a writ of certiorari to and including June 27, 1975 (Pet. App. 2a). On June 25, 1975, Mr. Justice Blackmun extended the time within which to file a petition to and including July 18, 1975 (Pet. App. 1a). The petition was filed on July 17, 1975, and was granted on November 11, 1975 (423 U.S. 945). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment and Section 1 of the Fifteenth Amendment to the United States Constitution are set forth in petitioners' brief at pages 3 and 4.

Section 2 of the Voting Rights Act of 1965, 79 Stat. 437, 42 U.S.C. 1973, provides as follows:

> No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color.

Sections 4 and 5 of the Voting Rights Act of 1965, 79 Stat. 438 and 439, as amended, 42 U.S.C. 1973b and 1973c, respectively, are set forth in the opinion of the court of appeals at notes 3 and 4 (Pet. App. 11a–13a).

QUESTIONS PRESENTED

1. Whether the courts below properly dismissed the Attorney General of the United States as a party to this action.

2. Whether the courts below correctly held that the redistricting plan for the state legislature enacted by the State of New York in 1974 does not unconstitutionally dilute petitioners' voting strength.

STATEMENT

Petitioners seek in this section to have declared unlawful a state legislative redistricting plan enacted by the State of New York in 1974 for Kings County and to have implementation of the plan enjoined. They also seek a declaration that the Attorney General of the United States employed improper criteria in objecting to a redistricting plan that had been enacted by the State in 1972 and an injunction prohibiting the implementation of any redistricting plan for Kings County other than that enacted in 1972 or a revised or newly-developed plan that would place the community they purport to represent in a single state senate and assembly district (see Pet. Br. 57).

The involvement of the Attorney General of the United States in the redistricting of Kings County resulted from the Attorney General's determination (see 35 Fed. Reg. 12354 (July 31, 1970)) that the State of New York maintained on November 1, 1968, a test or device (a literacy test) within the meaning of Section 4(c) of the Voting Rights Act of 1965 (the "Act"), 42 U.S.C. 1973b(c), and the determination of the Bureau of the Census (see 36 Fed. Reg. 5809 (March 26, 1971)) that less than fifty percent of the voting-age residents of the New York counties of Kings, Bronx and New York voted

219-020—76——2

in the presidential election of 1968.[1] The effect of these determinations was to prohibit the State of New York from implementing any change in "voting quali-

[1] Prior to the passage in 1970 of amendments to the Voting Rights Act of 1965, the Act applied only to States and political subdivisions which maintained, as of November 1, 1964, tests or devices as prerequisites to voting or voter registration and in which less than fifty percent of the voting-age residents had registered to vote or voted in the presidential election of 1964. 79 Stat. 438, 439. During the deliberations that preceded renewal of the Act in 1970, Congress was made aware that, in a number of jurisdictions not previously covered, the rate of voter registration and voting had declined from the levels existing in 1965 and that in several jurisdictions—including the New York counties of Kings, Bronx and New York—voter registration and the voting rate among voting-age residents had fallen below fifty percent. *E.g.*, 116 Cong. Rec. 6654, 6659 (1970) (remarks of Senator Cooper). A number of explanations were offered for this phenomenon, including the suggestion that New York's literacy test, coupled with the residual effect on potential black voters of their having received inferior educations in segregated schools in both the North and the South, deterred voting-age blacks in New York City from seeking to register and vote. *E.g.*, 116 Cong. Rec. 5563, 6152, 6659, 20161, 20165 (1970) (remarks of Senators Hruska, Eastland and Cooper and of Congressmen Celler and Albert, respectively). These considerations led Congress to alter the formula contained in Section 4 of the Act in a manner that included within the Act's coverage jurisdictions in which participation in the 1968 presidential election had been below fifty percent and a test or device had been employed at some time within the preceding ten years as a prerequisite to voting or voter registration. 84 Stat. 315; see 42 U.S.C. 1973b (a) and (b). The pertinent legislative history reveals that the New York counties of Kings, Bronx and New York "were a definite target of the 1970 amendments" to the Voting Rights Act. *NAACP* v. *New York*, 413 U.S. 345, 357.

On August 6, 1975, Congress again amended the Voting Rights Act, extending it for an additional seven years and adding new provisions designed primarily to protect the voting rights of citizens whose native language is other than English. 89 Stat. 400; see 42 U.S.C. 1973b(e).

fication or prerequisite to voting, or standard, practice, or procedure" (42 U.S.C. 1973) with respect to voting in the designated counties unless the change had first received the clearance required by the Act.[2]

The legislature of the State of New York is required by the New York Constitution, Article III,

[2] The State of New York filed suit for a declaratory judgment on behalf of the affected counties on December 3, 1971, asserting that during the ten years preceding the filing of the suit the applicable voter qualifications had not denied or abridged the voting rights of any individual on account of race or color and seeking an exemption from coverage under the Act. See Section 4(a), 42 U.S.C. 1973b(a). On April 13, 1972, the District Court for the District of Columbia entered the requested declaratory judgment, with the acquiescence of the United States, thereby permitting the State of New York to implement changes in voting procedures in the three counties without complying with the preclearance provisions of the Act. *New York State* v. *United States*, Civil No. 2419-71; see also *NAACP* v. *New York*, *supra*, 413 U.S. at 349.

As a result of the decision of the district court in *Torres* v. *Sachs*, 381 F. Supp. 309 (S.D. N.Y.), which held that the conduct of elections in the City of New York solely in the English language violated the rights of non-English speaking Puerto Rican citizens, the United States moved to reopen the declaratory judgment of April 13, 1972. See 42 U.S.C. 1973b(a). On November 5, 1973, the motion to reopen was granted and the NAACP was granted leave to intervene. The district court rescinded its earlier declaratory judgment on January 4, 1974, and directed the State of New York to comply *pendente lite* with Sections 4 and 5 of the Voting Rights Act. On April 25, 1974, the NAACP moved for summary judgment denying New York's request for an exemption from the Act—contending, *inter alia*, that the New York City system of public education discriminated against blacks and had caused blacks to suffer from a disproportionately high illiteracy rate. On April 30, 1974, the district court denied the motion for summary judgment that had been filed by the State of New York and granted the NAACP's motion for summary judgment. This Court summarily affirmed. *New York on behalf of New York County* v. *United States*, 419 U.S. 888.

Sections 4 and 5, to reapportion electoral districts throughout the State in accordance with population shifts revealed by the decennial census of the United States.[3] Following the 1970 census, the New York legislature enacted reapportionment plans affecting various counties in the State, including Kings, Bronx and New York counties. Laws of New York, chs. 11, 76–78 (1972). Rather than bringing an action for a declaratory judgment, the State of New York, on January 31, 1974, submitted the reapportionment plans involving Kings, Bronx and New York counties to the Attorney General for review under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c (Pet. App. 14a).[4] This submission entailed proposed redistricting for 14 congressional, 21 state senate and 47 state assembly seats in the three counties.[5]

The Attorney General objected to certain provisions in the reapportionment plans for Kings and New York counties by letter from Assistant Attorney Gen-

[3] See *WMCA, Inc.* v. *Lomenzo*, 377 U.S. 633; *In re Orans*, 17 N.Y. 107, 216 N.E. 2d 311, 269 N.Y.S. 2d 97.

[4] The delay in presentation of the plan to the Attorney General was occasioned by the litigation discussed at note 2, *supra*.

[5] Upon receiving a submission under Section 5 of the Act, the Attorney General notifies interested persons and groups of the submission (see 28 C.F.R. 51.13) and conducts an informal review (see C.F.R. 51.1 *et seq.*). That review may take into account materials presented by the State or political subdivision potentially affected by the proposed voting change, information provided by private individuals and groups, and the results of any investigations undertaken by the Department of Justice. The standards the Attorney General uses in deciding whether to object to implementation of a proposed voting change submitted to him for review are set forth at 28 C.F.R. 51.19.

eral Pottinger, dated April 1, 1974 (App. 14–16).[6] The letter of objection advised the New York Attorney General's office that (App. 14):

> on the basis of all available demographic facts and comments received on these submissions as well as the state's legal burden of proving that the submitted plans have neither the purpose nor the effect of abridging the right to vote because of race or color, we have concluded that the proscribed effect may exist in parts of the plans in Kings and New York counties.

The Attorney General's objections to the plan for Kings County—which is the only county involved in this litigation—encompassed proposed congressional as well as state senate and assembly districts.[7] All of these districts would have covered essentially the same geographic area, an area that includes a large community of blacks and Puerto Ricans living in the Bedford-Stuyvesant section of north-central Brooklyn (see App. 221). The factual basis of the Attorney General's objections to the state legislative districts proposed in the plan was explained in the letter as follows (App. 15):

> Senate district 18 appears to have an abnormally high minority concentration while adjoining minority neighborhods are significantly diffused into surrounding districts. In the less populous proposed assembly districts, the

[6] See 28 C.F.R. 0.50 and 51.2(d).

[7] The Attorney General did not object to the provisions in the plan for New York County relating to congressional districts or to any of the provisions in the plan for Bronx County (see App. 14–16).

> minority population appears to be concentrated into districts 53, 54, 55 and 56, while minority neighborhoods adjoining those districts are diffused into a number of other districts. * * * [W]e know of no necessity for such configuration and believe other rational alternatives exist.[8]

Although the present record contains only part of the materials submitted to and considered by the Attorney General in his review of the 1972 plans, the record does show that the state legislative district lines proposed in those plans were strenuously opposed by persons and groups with ties to the minority communities in Kings County. A lengthy memorandum (App. 202–230) and letter (App. 231–234) submitted on behalf of the NAACP and letters from several prominent black and Puerto Rican elected officials (App. 237–247) charged that electoral lines in New York City generally, and in Kings County in particular, had been purposely and effectively gerrymandered to submerge and dissipate the voting strength of large portions of the black and Puerto Rican populations (*e.g.*, App. 220–221, 237).[9] In support of these charges, it was alleged, *inter alia,* that (1) the

[8] Petitioners do not seek in this litigation any relief with respect to the Kings County congressional districting.

[9] Although not contained in the present record, the Attorney General also received materials contending that the district lines proposed in the 1972 plans were racially neutral. These included legislative committee reports, a memorandum from the New York Attorney General's office replying to the NAACP's memorandum and letters from several state legislators.

district lines of Kings County had been drawn by local political leaders in a conscious effort to preserve in office white legislators from areas with growing black and Puerto Rican populations and to remove white communities from other districts likely to be controlled by those minorities (App. 209–210);[10] (2) racially polarized voting, particularly the strong tendency of white persons to vote against black or Puerto Rican candidates, is an established poltical fact in New York City (App. 212);[11] (3) under the plan the total number of non-whites (*i.e.,* blacks and Puerto Ricans) placed in

[10] For example, the NAACP alleged that an Hasidic Jewish community in the Crown Heights area of Brooklyn had originally been placed in a state assembly district (the 41st Assembly District) having a high percentage of minority persons but that, after vigorous protest, a corridor had been created through the black and Puerto Rican communities in order to reach the Hasidic Jewish community and to place it in a state assembly district comprised predominantly of white persons (App. 210). Similarly, the NAACP alleged that a black and Puerto Rican majority had initially been created in the 44th Assembly District in Brooklyn but that this decision had been reversed as a result of pressure from a white community that would have been in the new district (*ibid.*).

[11] The NAACP noted in support of this allegation that no black or Puerto Rican had ever been elected to a statewide office in New York or to a citywide office in New York City and that with a single exception, occurring when a black candidate ran unopposed, no majority white district in the City had ever elected a black or Puerto Rican to office (App. 212–217). It stated that in a 1972 contest between a white candidate and a black candidate in the 57th Assembly District (which contained the Williamsburgh Hasidic Jewish community) "[t]he Black challenger won 27 of the 43 election districts [*sic*: precincts], but lost the election because he was beaten by a margin of almost 10 to 1 in the white community" (App. 212).

majority white districts would exceed the number of whites placed in majority non-white district in Kings County by between 3 and 5 to 1 (App. 220);[12] (4) the 1972 plan for Kings County provided for relatively compact districts in the center of the Bedford-Stuyvesant section of Brooklyn, resulting in districts in which there were virtually no whites (see App. 223–225), and paired the balance of the minority community with larger white communities (App. 221);[13] and (5) the system of appointing and controlling election inspectors in Kings County had operated in the past to discriminate

[12] The NAACP presented the following table in support of this allegation (App. 220):

Kings County District	Non-Whites in Majority White Districts	Whites in Majority Non-White Districts
Congressional	455, 862	93, 547
Senate	574, 811	44, 081
Assembly	361, 707	135, 260

The 1972 plan for Bronx County, in contrast, placed only a slightly larger number of blacks and Puerto Ricans in predominantly white districts than the number of whites placed in minority districts (App. 220).

[13] The NAACP observed in support of this allegation that "[a] single overwhelmingly non-white district (the 12th Congressional and 18th Senate), or in the case of the smaller Assembly Districts 5 districts (the 40th, 53rd, 54th, 55th, and 56th), are placed in the center of the [Bedford-Stuyvesant] ghetto [by the 1972 plan for Kings County]. Most of these districts are over 80 percent non-white. The non-white communities remaining further from the center of the ghetto are then paired with larger white communities outside the ghetto. * * * Not a single white community of any size is located in a majority non-white district in Kings County" (App. 221–222).

against and abridge the voting rights of blacks and Puerto Ricans (see App. 225–229).[14]

Upon receiving the Attorney General's letter objecting to certain provisions in the redistricting plans for Kings and New York counties, the State of New York could have brought an action before a three-judge court in the District of Columbia challenging the basis of the Attorney General's objections. See 42 U.S.C. 1973c. But the State chose not to do so, purportedly because of "exigencies of time" relating to the preparation and conduct of primary and general elections in 1974 (App. 9).[15] Instead, the State

[14] The NAACP also claimed that various strategies that had been employed in Kings County had "generally succeeded in minimizing the political influence of non-white voters. The first non-white State Senator was not elected in Kings County, for example, until 1964. Prior to 1968 there still was not a majority non-white Congressional District in Kings County, the large Bedford-Stuyvesant ghetto being divided among five majority white districts. As a result of federal litigation the Congressional Districts in Kings County were redrawn in 1968, and a majority non-white district was created. That district, the 12th, has been represented since its creation by Congresswoman Shirley Chisholm" (App. 208–209).

[15] The State was also under pressure because of a suit filed by the NAACP seeking to compel the State to enact new district lines in Kings and New York counties. *NAACP* v. *New York City Board of Elections*, S.D. N.Y. 72 Civ. 1460 (see Pet. App. 15a and n. 6).

Although the State chose not to file suit in the District Court for the District of Columbia for a declaratory judgment to permit implementation of the 1972 plans, a suit was filed by four state legislators. That suit was ultimately dismissed on the ground that the named plaintiffs lacked standing to challenge the Attorney General's objections to the 1972 plans. *Griffith* v. *United States*, D.D.C., 74 Civ. 648 (May 3, 1974) (see Pet. App. 55a, n. 15).

219-020—76——3

revised those portions of the 1972 redistricting plans to which the Attorney General had objected—including the provisions contained in the plan for election to the state senate and assembly from Kings County, which are the subject of this litigation (App. 130–172). The State submitted these revised plans to the Attorney General on May 31, 1974 (App. 284).[16]

Shortly after the State had submitted its 1974 redistricting plan for Kings County to the Attorney General, petitioners—who purport (see Pet. Br. 4–6) to represent the Hasidic Jewish community living in the Williamsburgh area of Brooklyn (Kings County)—brought this action challenging the 1974 plan on the ground that it unlawfully diluted the voting strength of the approximately 30,000 persons who comprise the Hasidic Jewish community in Williamsburgh. They alleged, more specifically, that the plan violated their rights under the Fourteenth and Fifteenth Amendments by dividing their community between two state senate and assembly districts.[17] They further alleged that they had been assigned to districts

[16] The racial composition of the state senate and assembly districts provided for in the 1972 and 1974 plans for Kings County is set forth in the appendix to this brief, *infra*, pp. 53–54.

[17] This allegation was based on the fact that the lines between Senate Districts 23 and 25 and between Assembly Districts 57 and 58 would follow the Brooklyn-Queens Expressway under the 1974 plan (App. 10, 29–30) and the pass through their community, whereas under the 1972 plan their community was located entirely within Senate District 17 and Assembly District 57 (App. 7). The community represented by petitioners is within a single congressional district (the 14th Congressional District) under the 1974 plan (App. 47).

solely on the basis of race, in violation of the Fifteenth Amendment and Section 2 of the Voting Rights Act, 42 U.S.C. 1973, and that the Attorney General had used improper standards in objecting to certain provisions of the 1972 redistricting plan for Kings County (see App. 5–12).

While petitioners' motion for a preliminary injunction was pending, the Attorney General advised the State, by letter and Memorandum of Decision dated July 1, 1974, that he had decided not to object to implementation of the 1974 redistricting plans for Kings and New York counties (App. 283–302). The Memorandum of Decision noted, *inter alia,* that (1) the Attorney General does "not have standing to evaluate [in the context of reviewing a submission under Section 5 of the Voting Rights Act], and express[es] no opinion as to legal issues not within the scope of the Voting Rights Act" (App. 285); (2) "Puerto Ricans in New York City may be considered within the protections of the Fifteenth Amendment and the Voting Rights Act by virtue of both judicial precedent and Congressional determinations" (App. 291); (3) nothing in the "circumstances surrounding the adoption of the Fifteenth Amendment, the passage of the Voting Rights Act and its Amendments, the language of those provisions, their legislative history, or the formula used for bringing states and political subdivisions under the Act" indicates that Congress meant to extend the protections provided for by that Act to Hasidic Jews or to persons of Irish, Polish or Italian descent (App. 293); (4) the purpose of

the Voting Rights Act is to "assure that the *opportunity* of the affected minorities to participate freely in the electoral process" is not abridged, not to maximize the voting strength of affected minorities (App. 298, original emphasis); (5) in light of these governing principles, the materials submitted regarding the 1974 redistricting for Kings and New York counties do not provide a reasonable basis for an objection by the Attorney General to implementation of those plans (App. 302).[18]

Following the receipt of notice that the Attorney General had decided not to object to implementation of the 1974 plans, the State of New York (App. 303–306) and the NAACP (App. 201) moved to have petitioners's complaint dismissed on the ground that it

[18] The Attorney General thus rejected the contentions of representatives of the black and Puerto Rican communities that the 1974 plan for Kings County violated the Voting Rights Act because district lines could have been drawn resulting in a greater number of districts with substantial black or Puerto Rican majorities (App. 293–298). The Attorney General's Memorandum of Decision responded in part to minority-group complaints concerning the 1974 plan by noting that (App. 298): "The only function of the Attorney General under Section 5 is to evaluate a voting change, such as that encompassed in the instant submission, once it has been adopted by the state and submitted for the Attorney General's review, and to determine the limited question of whether the purpose or effect of the change in question is to deny or abridge the right to vote on account of race or color. If no such abridgment or denial exists, the Attorney General must not object to the plan, regardless of the merits or demerits of the plan in other regards, including state, local, and partisan political ones. If an abridgment or denial does exist—as we found in the first submission by New York—the Attorney General must object, stating his reasons, but not drawing a counter plan or commanding any particular state response." See, also n. 37, *infra*.

failed to state a claim upon which relief could be granted. The Attorney General moved to be dismissed as a party defendant on the ground, *inter alia,* that the court lacked jurisdiction to adjudicate the allegations against him since any relief could be granted, if at all, solely by the District Court for the District of Columbia under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c (App. 257–258). On July 25, 1974, the district court entered an order denying petitioners' motions for a preliminary injunction and summary judgment and granting the motions to dismiss the action (App. 321–324, Pet. App. 532–538). The court held that once the Attorney General had informed the State of New York that he had decided not to object to implementation of the 1974 redistricting provisions challenged by petitioners, no controversy remained under Section 5 of the Voting Rights Act and that petitioners' constitutional challenges were without merit. With respect to the latter, the court held that petitioners enjoyed no constitutional right to separate community recognition in the reapportionment process, that state officials may take into account the racial impact of alternative redistricting schemes in an effort to correct past racial discrimination and that "no one is being disenfranchised by the redistricting [at issue here] and no voting right is being extinguished" (Pet. App. 58a).

The court of appeals affirmed (by a vote of 2 to 1) on January 6, 1975 (Pet. App. 7a–22a). The court held that the complaint against the Attorney General must be dismissed because the district court was with-

out jurisdiction to review the Attorney General's objections to the 1972 plans and no relief was sought against the Attorney General except a declaration that he had applied impermissible standards in objecting to those plans (Pet. App. 20a–22a). As to the state defendants, the court held that petitioners had failed to prove that their constitutional rights had been violated (*id.* at 26a–32a). In reaching that decision, the court stated that although petitioners presented no cognizable claim, as Hasidic Jews, to remain together as a voting bloc, they did have standing to contend, as white voters, that their voting rights had been abridged on account of race (*id.* at 22a–26a). The court concluded, however, that (1) since the Voting Rights Act "necessarily deals with race or color, corrective action under it must do the same" (*id.* at 31a, emphasis deleted), (2) the Act was intended to implement the Fourteenth and Fifteenth Amendments and is constitutional (*ibid.*), and (3) petitioners had failed to show that the 1974 redistricting improperly diluted the voting strength of white voters in Kings County (*id.* at 31a–32a).

The dissenting member of the panel would have held the redistricting provisions challenged by petitioners unconstitutional on the ground that they were developed with consciousness of racial considerations, and incorporated racial "quotas," which may be tolerated only on rare occasions (Pet. App. 38a–39a), if at all (*id.* at 43a). In the view of the dissent, the use of racial classifications was not shown to be necessary or appropriate to cure any supposed wrongs suffered

by non-whites in Kings County (see *id.* at 42a). The dissenting judge disagreed, moreover, with the majority's consideration of racial percentages in determining whether petitioners' voting rights had been abridged or diluted since "our Constitution forbids us to reason from notions about what kind of racial composition is 'proportionate' or 'disproportionate' in our legislatures" (*id.* at 47a).

SUMMARY OF ARGUMENT

The only relief that petitioners have requested against the Attorney General of the United States is a declaratory judgment that the criteria employed by him in objecting to the 1972 redistricting plan for Kings County were "unconstitutional and improper" (App. 13). But as petitioners apparently now concede, and as the court of appeals held, jurisdiction to entertain such a claim is limited to the District Court for the District of Columbia. It follows that the Attorney General was properly dismissed as a party to this suit.

In addition, petitioners lacked standing to seek review of the Attorney General's objections to the 1972 plan for Kings County—or of the Attorney General's decision not to object of the 1974 plan. Once the Attorney General has objected to the implementation of a proposed voting change submitted to him by a jurisdiction covered by the Voting Rights Act, the voting change may be implemented only if the affected State or political subdivision obtains a declaratory judgment in the District Court for the District of Columbia that the proposed change does not have

the purpose and would not have the effect proscribed by the Act. Once the Attorney General has decided not to object to a proposed voting change, it is similarly settled that private parties, such as petitioners, may seek to enjoin enforcement of the change only in traditional suits attacking its constitutionality. In both types of suit, judicial review focuses on the purpose and effect of the voting change itself rather than on the decision of the Attorney General.

Although the Attorney General was properly dismissed as a party to this suit, the United States nevertheless has a substantial interest in the constitutional questions petitioners have raised. Indeed, we believe that acceptance of the contentions petitioners have advanced would make administration of the voting Rights Act exceedingly difficult and would significantly undermine the ability of jurisdictions subject to the Act to avoid or remedy district lines having a racially discriminatory effect.

The essence of petitioners' challenge to the 1974 redistricting plan for Kings County is that it was developed with consciousness of its racial impact and that such deliberate use of race is unlawful *per se* under the Fourteenth and Fifteenth Amendments. But it is inconceivable that those responsible for redistricting Kings County could have remained unaware of the approximate racial, ethnic, and political composition of the alternative redistricting plans that were or might have been enacted for Kings County. Once enacted with such awareness, any plan thus would have had a racial purpose in the sense complained of by petitioners—but it does not follow that that purpose would have been invidious or racially discriminatory, in violation of the Fourteenth or Fifteenth Amendments.

Moreover, petitioners fail to recognize that the State of New York was required by the Voting Rights Act to prove the absence of a racially discriminatory effect prior to implementing any changes in existing district lines. It would be anomalous indeed if the good faith (and ultimately successful) efforts of the State of New York to comply with the Voting Rights Act, by avoiding the enactment of a redistricting plan having a racially discriminatory effect, were held unconstitutional because those efforts involved a consciousness of racial impact.

ARGUMENT

I. THE COURT OF APPEALS PROPERLY DISMISSED THE ATTORNEY GENERAL OF THE UNITED STATES AS A PARTY TO THIS SUIT

A. THE DISTRICT COURT LACKED JURISDICTION TO REVIEW THE ATTORNEY GENERAL'S OBJECTIONS TO THE 1972 PLAN FOR KINGS COUNTY OR THE ATTORNEY GENERAL'S DECISION NOT TO OBJECT TO THE 1974 PLAN

The only relief that petitioners have requested against the Attorney General of the United States is a declaratory judgment that the criteria employed by him in objecting to the 1972 redistricting plan for Kings County were "unconstitutional and improper" (App. 13). As the court of appeals held (Pet. App. 21a–22a), however, the District Court for the Eastern District of New York lacked jurisdiction to grant such relief—a fact that petitioners apparently now

concede (see Pet. 9, n. 3; Pet. Br. 51). It follows that the Attorney General was properly dismissed as a party to this suit.

Section 14(b) of the Voting Rights Act, 42 U.S.C. 1973*l*(b), provides in pertinent part that "[n]o court other than the District Court for the District of Columbia * * * shall have jurisdiction to issue any declaratory judgment" pursuant to Section 5 of this Act. At least three discrete types of suit present questions under Section 5: (1) those initiated by a State or political subdivision to secure a declaratory judgment that a proposed voting change concededly covered by the Act does not have the purpose and would not have the effect, if implemented, of denying or abridging the right to vote on account of race or color; (2) those initiated by a private party to secure declaratory and injunctive relief, and involving the claim that a particular state enactment is covered by Section 5 but has not been subjected to the required federal scrutiny; and (3) those initiated by the Attorney General of the United States to secure an injunction prohibiting the implementation of a state enactment without the required federal preclearance.

Although all three of these types of suit involve questions arising under Section 5, and must be heard by a three-judge district court,[19] jurisdiction to entertain only the first—a suit by a State or political subdivision for a declaratory judgment permitting the

[19] *Perkins* v. *Matthews*, 400 U.S. 379, 383–387; *Allen* v. *State Board of Elections*, 393 U.S. 544, 560–563; cf. *Harper* v. *Levi*, 520 F. 2d 53, 61–64 (C.A.D.C.).

implementation of a voting change covered by the Act—is limited to the District Court for the District of Columbia.[20] As this Court explained in *Allen* v. *State Board of Elections, supra,* 393 U.S. at 558–559 (emphasis omitted):

> A declaratory judgment brought by the State pursuant to [Section] 5 requires an adjudication that a new enactment does not have the purpose or effect of racial discrimination. However, a declaratory judgment action brought by a private litigant does not require the Court to reach this difficult substantive issue. The only issue is whether a particular state enactment is subject to the provisions of the Voting Rights Act, and therefore must be submitted for approval before enforcement. The difference in the magnitude of these two issues suggests that Congress did not intend that both can be decided only by the District of Columbia District Court. Indeed, the specific grant of jurisdiction to the district courts in [Section] 12(f) indicates Congress intended to treat "coverage" questions differently from "substantive discrimination" questions.* * *[21]

[20] This jurisdictional limitation has been upheld by this Court as a proper exercise of Congress' power under Article III, Section 1, of the Constitution to "ordain and establish" inferior federal tribunals. *South Carolina* v. *Katzenbach*, 383 U.S. 301, 335; *Allen* v. *State Board of Elections*, *supra*, 393 U.S. at 559–560.

[21] Section 12(f) of the Act, 42 U.S.C. 1973j(f), provides that "[t]he district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether a person asserting rights under the provisions of this Act shall have exhausted any administrative or other remedies that may be provided by law."

This Court again dealt with the differences between the "coverage" and "substantive discrimination" questions arising under Section 5 of the Voting Rights Act in *Perkins* v. *Matthews, supra.* The decision in that case again confirmed that all judicial power to review proposed voting changes affecting jurisdictions subject to the Act, and to render declaratory judgments permiting the implementation of such changes, is vested exclusively in the District Court for the District of Columbia (400 U.S. at 384–385):

> * * * *Allen* * * * explicitly held that, as between the United States District Court for the District of Columbia and other district courts "Congress intended to treat 'coverage' questions [*i.e.,* whether a particular voting change requires federal preclearance] differently from 'substantive discrimination' questions," * * * and therefore: "we do not consider whether this change has a discriminatory purpose or effect." * * * This is not to say that a district court limited to deciding a "coverage" question should close its eyes to the congressional purpose in enacting [Section] 5 * * * What is foreclosed to such district court is what Congress expressly reserved for consideration by the District Court for the District of Columbia or the Attorney General—the determination whether a covered change does not have the purpose or effect "of denying or abridging the right to vote on account of race or color." [22]

[22] This Court held in *Perkins* that a three-judge district court sitting in Mississippi had misconceived the permissible scope of its inquiry under Section 5 of the Voting Rights Act in examining several changes in voting procedures to determine whether they had a racially discriminatory purpose or effect. 400 U.S. at 383–386; see also *Connor* v. *Waller*, 421 U.S. 656 (*per curiam*); *City of Richmond* v. *United States*, 422 U.S. 358, 381 (Brennan, J., dissenting); *Holt* v. *City of Richmond*, 459 F. 2d 1093, 1100 (C.A. 4), certiorari denied, 408 U.S. 931.

Thus, had the State of New York sought a declaratory judgment permitting implementation of the 1972 redistricting plan for Kings County, it is settled that only a three-judge district court in the District of Columbia would have had jurisdiction to entertain the suit. The fact that the State chose instead to submit the 1972 plan for Kings County to the Attorney General neither precluded it from subsequently seeking a declaratory judgment permitting implementation of the plan (see, *e.g., Beer* v. *United States,* No. 73–1869, decided March 30, 1976) nor conferred upon the single-judge district court in this case jurisdiction over petitioners' complaint against the Attorney General. Similarly, the fact that petitioners did not directly seek in this suit a declaratory judgment permitting implementation of the 1972 plan did not cure the jurisdictional defect in their complaint against the Attorney General: at base, their request for a declaratory judgment that the Attorney General had used "unconstitutional and improper criteria" in objecting to the 1972 plan amounted to a request that the district court adjudicate a "substantive discrimination" question arising under Section 5 of the Voting Rights Act. This request was inconsistent with the Act's explicit vesting of all judicial power to consider such questions in the District Court for the

District of Columbia, and misconceived the role of the Attorney General under Section 5.[23]

If a State or political subdivision covered by the Voting Rights Act chooses to submit a proposed voting change to the Attorney General, as did the State of New York in the present case, the Attorney General must determine within sixty days whether the submitting authority has satisfied its burden of showing that the change is without a racially-discriminatory purpose or effect, 42 U.S.C. 1973c; 28 C.F.R. 51.19.[24] In

[23] The State of New York has requested that, in the event the 1974 redistricting plan for Kings County is held to violate certain of petitioners' constitutional rights, this Court "should direct the District Court to order the use of the district lines established by [the 1972 plan for Kings County]" (Br. 27). For the reasons just discussed, however, the 1972 redistricting plan for Kings County is not before this Court, the State of New York having chosen not to seek clearance for the plan in the District Court for the District of Columbia after having been notified of the Attorney General's objections. Even if this Court were to hold portions of the 1974 plan unconstitutional, the fact would remain that the State has thus far failed to meet its burden—in the only forums permitted by statute to consider the question—of showing that the 1972 plan would not have, if implemented, the racially-discriminatory purpose or effect proscribed by the Voting Rights Act.

[24] 28 C.F.R. 51.19 provides in part that "[i]f the evidence as to the purpose or effect of the change is conflicting, and the Attorney General is unable to resolve the conflict within the 60-day period, he shall, consistent with the * * * burden of proof applicable in the District Court, enter an objection and so notify the submitting authority."

In *South Carolina* v. *Katzenbach*, *supra*, 383 U.S. at 335, this Court stated that "there was nothing inappropriate about limiting litigation under [Section 5 of the Act] to the District Court for the District of Columbia, and in putting the burden of proof on the areas seeking relief." One of the principal purposes of

the event that burden is not satisfied, the Attorney General must interpose an objection—but the submitting authority nevertheless may seek from the District Court for the District of Columbia a declaratory judgment permitting implementation of the proposed voting change. If the submitting authority meets its burden of showing that the proposed change has neither the purpose nor the effect proscribed by the Act, the Attorney General may not object and the change may be implemented forthwith. Once the submitting authority has received the required federal clearance under Section 5, "private parties may enjoin enforcement of the new enactment only in traditional suits attacking its constitutionality; there is no further remedy provided by [Section] 5" (*Allen* v. *State Board of Elections*, *supra*, 393 U.S. at 549–550).

The legislative history of the Voting Rights Act clearly indicates that by conferring jurisdiction to consider substantive discrimination questions arising under Section 5 upon only a single federal district court, Congress sought to ensure that covered voting changes would be dealt with on the federal level pur-

28 C.F.R. 51.19 is to place the same burden upon submitting authorities that choose to have proposed voting changes reviewed by the Attorney General that they would have in a suit for a declaratory judgment in the United States District Court for the District of Columbia. This Court approved the burden of proof provision of 28 C.F.R. 51.19 in *Georgia* v. *United States*, 411 U.S. 526, 538–539. See also H.R. Rep. No. 397, 91st Cong., 1st Sess. 8 (1969); H.R. Rep. No. 94–196, 94th Cong., 1st Sess. 8 (1975).

suant to uniform and consistent standards.[25] The Attorney General has acted consistently with this goal by reviewing proposed voting changes submitted to him in accordance with the criteria that govern the adjudication of requests for a declaratory judgment in the District Court for the District of Columbia (and in accordance with the decisions of this Court). To permit these questions to be decided by district courts other than the District Court for the District of Columbia would jeopardize the uniformity and consistency that Congress sought to build into the preclearance mechanisms created by Section 5.

Moreover, in reviewing proposed voting changes submitted to him under Section 5, the Attorney General "does not act as a court" (*Allen* v. *State Board of Elections, supra,* 393 U.S. at 549), but simply affords covered jurisdictions an expeditious means of securing the required federal preclearance.[26] If the Attorney

[25] *E.g.*, 111 Cong. Rec. 8839, 10355, 15663 (1965): Hearings on S. 1564 (Voting Rights) before the Senate Committee on the Judiciary, 89th Cong., 1st Sess., pt. 1, pp. 69–73 (1965). An amendment to vest jurisdiction in all federal district courts to entertain suits for declaratory judgments, permitting the implementation of covered voting changes, was defeated in 1965 (111 Cong. Rec. 10371 (1965)), and again in 1975 (121 Cong. Rec. H 4899 (daily ed. June 4, 1975)).

[26] As originally introduced, the bill that ultimately became the Voting Rights Act of 1965 made the enforceability of covered voting changes entirely contingent upon their preclearance by the District Court for the District of Columbia (the original bill (S. 1564, 89th Cong., 1st Sess. (1965)) is reproduced at 111 Cong. Rec. 5403–5404 (1965)). During the hearings on the bill before the Senate Judiciary Committee, Attorney General Katzenbach suggested that the burdens inherent in this procedure could be lessened significantly, without undue cost, were the bill amended to permit such changes to be submitted for less formal review and

General interposes a timely objection to a proposed voting change, and the submitting authority subsequently seeks a declaratory judgment to permit implementation of the change, the submitting authority is entitled in that judicial proceeding to a trial *de novo*. No particular weight is attached at that stage to the Attorney General's prior adverse determination, and the suit proceeds as one against the United States rather than against the Attorney General. The Attorney General is not called upon in such a suit to justify the basis of his earlier objections;[27] rather, the burden remains upon the State or political subdivision bringing the suit to show that the proposed vot-

possible preclearance by the Attorney General. Hearings on S. 1564 (Voting Rights) before the Senate Committee on the Judiciary, 89th Cong., 1st Sess., pt. 1, p. 237 (1965).

[27] Indeed, it would be contrary to the Act's scheme to permit judicial review of the Attorney General's determination to interpose an objection as an alternative to the declaratory judgment suit authorized by the Act. Such review would be both factually confined (to the materials that were submitted to the Attorney General) and legally far less than a decision on the ultimate merits, since the question necessarily would be whether the Attorney General had a reasonably arguable (even if ultimately incorrect) legal basis, under the decision law at the time, for interposing the objection. In light of the importance of expeditious resolution of voting rights cases and the availability under the Act of the dispositive declaratory judgment remedy, there is no proper role for such oblique and backward-looking litigation. It would, for example, serve no useful purpose for a court now to consider whether in a particular instance, prior to this Court's reversal of it, the Attorney General reasonably interpreted and applied the standards of the district court's decision in *Beer*. Instead, as in *Beer* itself, the specifically authorized declaratory judgment remedy provides the proper means for developing the legal standards to be applied under Section 5 by both the courts and the Attorney General.

ing change does not have the purpose and will not have the effect, if implemented, of denying or abridging the right to vote on account of race or color. See, *e.g., Beer* v. *United States,* No. 73-1869, decided March 30, 1976.

For similar reasons, had petitioners or the State of New York sought in the present case a declaratory judgment that the Attorney General used improper criteria in not objecting to implementation of the 1974 redistricting plan for Kings County—relief they have not requested—the district court would have lacked jurisdiction to entertain that claim. The significance of the Attorney General's decision not to object to the 1974 plan, so far as the present suit is concerned, is that it permitted the immediate implementation of the plan and meant that further consideration of petitioners' asserted grievances could proceed only on constitutional grounds (cf. *Connor* v. *Waller, supra*). If petitioners had prevailed on their Fourteenth and Fifteenth Amendment challenges to the 1974 plan, the Attorney General's decision not to object would have been without practical significance since the district court presumably would have enjoined the enforcement of the provisions of the plan that it found unconstitutional. But having found petitioners' challenges to be without merit, as it did, the court hardly would have been in a position to direct the Attorney General to enter an objection.[28]

[28] The decision in *Harper* v. *Levi*, 520 F. 2d 53 (C.A.D.C.), is not to the contrary. The plaintiffs in that case challenged a decision by the Attorney General not to object to the implementation of a proposed voting change, concededly covered by the Voting Rights Act, which had been held to be constitutional by a three-judge district court in South Carolina. The notice of the Attorney General's decision not to object to the change explained that "[i]t would in our view not be appropriate * * * to read the Voting Rights Act as requiring or permitting the Attorney General to review a determination made by a United States District Court in the proper exercise of its statutory jurisdiction" (*id.* at 59). The court of appeals held (by a 2-1 vote) that a single-judge district court in the District of Columbia had had jurisdiction to review the Attorney General's decision not to object to the voting change and, on the merits, that Section 5 of the Voting Rights Act requires the Attorney General to exercise his independent judgment in deciding whether a particular voting change has the purpose or would have the effect proscribed by the Act.

But the court of appeals took great care in *Harper* to distinguish the question presented in that case from the situation here. The court stated in *Harper*, for example, that "[w]e express no opinion on [the] reviewability of a determination not to object allegedly involving an erroneous application of [Section] 5's purpose-effect standard" (*id.* at 67, n. 115). The court added that "orthodox judicial review of a decision to interpose an objection presents different questions" than are presented when the Attorney General has simply deferred to a prior judicial determination unrelated to the Voting Rights Act and that "[i]t may be that Congress intended to confine review of * * * a decision [made by the Attorney General under Section 5] to the declaratory judgment action specified in [Section] 5 [citing *Allen* v. *State Board of Elections*, *supra*, and the court of appeals' decision in the present case]" (*ibid.*).

The court of appeals also stated in *Harper* that "undeviating deference by the Attorney General [to a decision by a district court outside the District of Columbia] conflicts directly with the

B. PETITIONERS LACKED STANDING TO SEEK REVIEW OF THE ATTORNEY GENERAL'S OBJECTIONS TO THE 1972 PLAN FOR KINGS COUNTY OR THE ATTORNEY GENERAL'S DECISION NOT TO OBJECT TO THE 1974 PLAN

Section 5 of the Voting Rights Act provides that only a "State or subdivision may institute an action in the United States District Court for the District

of Columbia for a declaratory judgment" that a proposed voting change does not have the purpose and would not have the effect proscribed by the Act.[29] Thus, even if petitioners had brought the present suit in the District Court for the District of Columbia, and had requested the convening of a three-judge court, they would have lacked standing under the Act to request that the court enter a declaratory judgment that the Attorney General had used improper criteria in objecting to certain provisions of the 1972 redistricting plan for Kings County.[30] Petitioners also

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congressional objective in vesting exclusive jurisdiction of actions under Section 5 in the District Court for the District of Columbia. Congress intended that the Section 5 standard be applied uniformly to covered states, and to accomplish this end directed that all litigation under Section 5 take place in the District of Columbia. To the extent that the Attorney General accords conclusive weight to local court determinations, the congressional goal of decisional uniformity may be frustrated" (*id.* at 72, footnotes omitted), Petitioners' request that the District Court for the Eastern District of New York issue a declaratory judgment that the Attorney General applied improper criteria in objecting to the 1972 redistricting plan for Kings County would similarly contravene this congressional policy. But see *East Carroll Parish School Board* v. *Marshall*, No. 73–861, decided March 8, 1976, slip. op. 3–4, n. 6. A later stage of the *Harper* litigation is currently pending on appeal in this Court in *Morris* v. *Gressette*, No. 75–1583.

[29] A related provision of the Act specifies that the optional submission of a proposed voting change to the Attorney General must be made "by the chief legal officer or other appropriate official of such State or subdivision * * *." 42 U.S.C. 1973c.

[30] As noted earlier (see note 15, *supra*), a suit was filed in the District Court for the District of Columbia challenging the Attorney General's decision to object to portions of the 1972 plans. That suit was ultimately dismissed on the ground that the named plaintiffs, four state legislators, lacked standing to challenge the Attorney General's decision. *Griffith* v. *United States*, D.D.C., 74 Civ. No. 648 (May 3, 1974) (see Pet. App. 55a).

would have lacked standing to challenge under the Voting Rights Act the Attorney General's decision not to object to implementation of the 1974 redistricting plan for Kings County since, as already noted, once the Attorney General has decided not to object to a particular voting change "private parties may enjoin the enforcement of the new enactment only in traditional suits attacking its constitutionality; there is no further remedy provided by [Section] 5" (*Allen* v. *State Board of Elections, supra,* 393 U.S. at 549–550).[31]

The only consequence of the Attorney General's having objected to a proposed voting change is to return the submitting authority to the *status quo ante*—that is, the submitting authority may not implement the change without having secured a favorable declaratory judgment in the District Court for the District of Columbia; alternatively, the submitting authority may forego changing its election laws or may amend the proposed change and seek federal preclearance of the new proposal. While the submitting authority is thus entitled to seek the required federal preclearance in a judicial proceeding, private parties such as petitioners are in a significantly different position.[32]

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[31] It is immaterial whether this conclusion is characterized as a failure to state a claim upon which relief could be granted or as lack of standing.

[32] Private parties have standing under the Voting Rights Act to obtain declaratory and injunctive relief prohibiting the enforcement of a particular state enactment pending the required federal preclearance. *Allen* v. *State Board of Elections*, *supra*, 393 U.S. at 554–557. The standing of private parties to seek such relief is based upon the guaranty in Section 5 that "no person shall

Petitioners had no legal right to implementation of the district lines described in the 1972 plan for Kings County, just as they had no enforceable right to have those lines enacted by the New York Legislature or to obtain the reversal of a veto by New York's Governor, had that occurred. The injury of which petitioners now complain—the division of their community between two state senate and assembly districts—was not caused by the Attorney General's objection to the 1972 plan for Kings County. The State had the option, in the face of that objection, of seeking the required federal clearance of the 1972 plan in the District Court for the District of Columbia or of

be denied the right to vote for failure to comply with [a new state enactment covered by, but not approved under, Section 5]." As this Court noted in *Allen*, the Attorney General "has a limited staff and often might be unable to uncover quickly new regulations and enactments passed at the varying levels of state government" (393 U.S. at 556, footnote omitted). It is therefore consistent with the broad remedial purposes of the Act—as urged by the United States in *Allen* (see 393 U.S. at 557, n. 23)—"to allow the individual citizen standing to insure that his city or county government complies with the [Section] 5 approval requirements" (*id.* at 557).

These considerations obviously do not apply when the Attorney General has interposed an objection to implementation of a proposed voting change, concededly covered by the Act. There is no danger in the latter circumstances that a person will be denied the right to vote because of the enforcement of a state enactment covered by, but not approved under, Section 5 of the Act. And, of course, the State or political subdivision affected by the Attorney General's objection to a particular voting change may seek the required clearance in the District Court for the District of Columbia.

adopting whatever different plan New York authorities deemed appropriate.[33]

II. THE 1974 PLAN FOR KINGS COUNTY DOES NOT VIOLATE PETITIONERS' RIGHTS UNDER THE FOURTEENTH OR FIFTEENTH AMENDMENTS

Although the Attorney General was not properly joined as a party to this suit, the United States nevertheless has a substantial interest in the constitutional questions that petitioners have raised. In challenging the 1974 redistricting plan for Kings County on constitutional grounds, petitioners are advancing contentions which, if accepted, would go far toward preventing realization of congressional goals reflected in the Voting Rights Act. Successful administration of that Act in the context of redistricting depends to a significant extent upon the ability of the covered States and political subdivisions to take into account the racial composition of proposed electoral districts.

[33] Had the State of New York brought suit under Section 5 of the Voting Rights Act for a declaratory judgment to permit implementation of the 1972 plan for Kings County, petitioners might have been permitted to intervene in that suit. See *City of Richmond* v. *United States*, 376 F. Supp. 1344, 1349, n. 23 (D. D.C.), vacated and remanded, 422 U.S. 358; *Beer* v. *United States*, 374 F. Supp. 363, 367, n. 5 (D. D.C.), vacated and remanded on other grounds, No. 73–1869, decided March 30, 1976; *City of Petersburg* v. *United States*, 354 F. Supp. 1021, 1024 (D. D.C.), affirmed, 410 U.S. 962. That method of permitting the views of interested private parties to be considered in a suit for a declaratory judgment seeking approval of a proposed voting change under Section 5 is not inconsistent with the Act's provision limiting the initiation of such a suit to the affected State or political subdivision. Cf. *Trbovich* v. *United Mine Workers*, 404 U.S. 528.

Petitioners would have this Court declare such use of race unlawful *per se* under the Fourteenth and Fifteenth Amendments, thereby undermining the ability of jurisdictions subject to the Voting Rights Act to avoid or remedy district lines having a racially discriminatory effect.

As discussed more fully below, the 1974 redistricting plan for Kings County does not violate petitioners' rights under either the Fourteenth or Fifteenth Amendment. Petitioners' complaint, in essence, is that the 1974 plan divided their community between two state senate and assembly districts and that that result was produced by a deliberate and unconstitutional use of race. But, as the court of appeals pointed out (Pet. App. 22a–24a), petitioners do not enjoy—as Hasidic Jews—a constitutional right to separate community recognition in legislative redistricting. Indeed, there cannot be separate representation of every community interest that thrives in Kings County, since the number of well-defined communities in the county far exceeds the number of available state senate and assembly seats.[34] Nor could petitioners show that the effect of the 1974 plan is to abridge their right to vote as white voters. In fact, whites are in a majority under the 1974 plan in a higher percentage of state senate and assembly districts than their percentage of the population of the county as a whole (Pet. App. 27a–28a, n. 21).

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[34] See Pet. App. 23a; *Wells* v. *Rockefeller*, 281 F. Supp. 821, 825 (S.D.N.Y.), reversed on other grounds, 394 U.S. 542.

Petitioners' contention that electoral redistricting must be accomplished without consciousness of its racial impact is both unrealistic and ultimately inconsistent with the right petitioners seek. Quite apart from the commands of Section 5 of the Voting Rights Act, it is inconceivable that the Joint Legislative Committee responsible for recommending district lines to the New York Legislature, or the Legislature itself, would be unaware of the approximate racial, ethnic, and political composition of the alternative redistricting plans that were or might have been enacted for Kings County. Consequently, any electoral redistricting plan enacted for Kings County would in this sense have a racial purpose—but that purpose would not necessarily be individious or discriminatory. At base, moreover, petitioners do not really seek enactment of an electoral redistricting plan drawn wholly without regard to such considerations; they seek instead to require the State of New York to return to or develop a plan for Kings County sufficiently conscious of racial or ethnic composition to unite the community they purport to represent in a single state senate and assembly district.

In contending that the state senate and assembly districts provided for in the 1974 plan are invalid because they were developed with a consciousness of racial impact, petitioners also fail to recognize that the State of New York was required by the Voting Rights Act to prove the absence of a racially discriminatory effect prior to implementing any changes

in existing district lines. Thus, the state defendants could not close their eyes to race in developing a redistricting plan for Kings County, even if that were otherwise possible. Such racial consciousness is not equivalent, however, to invidious racial discrimination.

A. THE 1974 PLAN FOR KINGS COUNTY DOES NOT HAVE THE EFFECT OF DENYING OR ABRIDGING PETITIONERS' RIGHT TO VOTE ON ACCOUNT OF RACE

Although petitioners asserted in their complaint that "the result" of the 1974 redistricting plan for Kings County was "unjustifiably to divide in half, for electoral purposes" the Hasidic Jewish community in Williamsburgh, and to "dilute the value of each [petitioner's] franchise by halving its effectiveness" (App. 11), petitioners have not pressed that assertion in this Court. As presently framed by petitioners, this case does not involve an allegation of a racially discriminatory effect but of a racially discriminatory purpose. We submit, however, that the purpose and effect of the redistricting provisions challenged by petitioners cannot be entirely compartmentalized, and that prior to assessing the lawfulness of the purpose of the 1974 plan it is important first to recognize that the plan does not have the effect of denying or abridging the right to vote on account of race.

According to the data submitted to the Attorney General in connection with his review of the 1972 and 1974 plans, whites constitute 64.9 percent and non-whites (*i.e.*, blacks and Puerto Ricans) constitute 35.1

percent of the total population of Kings County.[35] Under the 1974 plan, three of the ten state senate districts wholly or partially within the county, or 30 percent, contain substantial non-white population majorities—a percentage somewhat lower than the percentage of non-whites in the population of the county as a whole. Of the twenty-two state assembly districts within Kings County, fifteen (or 68 percent) contain white population majorities. (See Pet. App. 27a–28a, n. 21.)

Moreover, at least two factors cause the voting potential of whites under the 1974 plan to be in fact significantly higher than indicated by the total population figures. First, the percentage of the white population in Kings County of voting age is approximately 20 percent higher than the percentage of blacks and Puerto Ricans of voting age (App. 263). Second, the mobility rate among non-whites in Kings County is significantly greater than the mobility rate among

[35] The data provided to the Attorney General by the State of New York referred separately to whites, Negroes, Puerto Ricans and "others" (*i.e.*, primarily Asian-Americans (App. 106)). Consistently with the Attorney General's analyses in reviewing the plans submitted by the State (see App. 294), the minority-group statistics set forth in this brief refer only to blacks and Puerto Ricans. References in the record by state officials to "non-white" or "minority" percentages, however, generally include persons in the "other" category (see App. 106), resulting in slightly higher percentages of minority persons in several districts than the percentages relied upon by the Attorney General. In no electoral district in Kings County do persons in the "other" category account for more than two percent of the total population (App. 252–255).

whites. Because of New York's residency requirements (see *Rosario* v. *Rockefeller,* 410 U.S. 752, 759, n. 9), a smaller percentage of blacks and Puerto Ricans of voting age are actually eligible to vote in any particular state election than whites of voting age (see App. 264).[36] Thus, in order for blacks and Puerto Ricans of voting age to be in the majority in any given electoral district, blacks and Puerto Ricans must comprise substantially more than 50 percent of the district's total population.

Thus, it can hardly be said that the effect of the 1974 redistricting plan for Kings County is to dilute or minimize the voting power of white residents of the county. Not only are whites in a majority in a higher percentage of electoral districts in the county than their percentage of the total population, but they have voting power exceeding that indicated by total population figures. Nor is there any evidence in the present record suggesting that "the political processes leading to nomination and election [in Kings County are] not equally open to participation" by whites (*White* v. *Regester,* 412 U.S. 755, 766); indeed, the available evidence indicates that those processes are

[36] As a result of the elections held under the 1974 plan, 77.2 percent of the assemblymen and 80 percent of the senators from Kings County are white. Of the five districts in which increases in the percentage of blacks and Puerto Ricans occurred as a result of the 1974 plan (when contrasted with the 1972 plan approved by petitioners), white candidates prevailed in all but one district. *The New York Times*, November 7, 1974, pp. 39–40; see *National Roster of Black Elected Officials* (Vol. 5), Joint Center for Political Studies, July 1975, p. 162.

somewhat more accessible to whites, or at least have been more accessible historically, than to non-whites (see discussion at pp. 8–11, *supra*).[37]

B. THE 1974 PLAN FOR KINGS COUNTY IS NOT UNCONSTITUTIONAL SIMPLY BECAUSE IT WAS DEVELOPED WITH A CONSCIOUSNESS OF THE PLAN'S RACIAL IMPACT

Petitioners' basic contention is that overt consciousness of racial impact in the drawing of district lines is unlawful *per se* under the Fifteenth Amendment (see Pet. Br. 24–42). Although this contention has considerable superficial appeal, it ignores the unavoidable realities of legislative redistricting and would make compliance with the Fifteenth Amendment virtually impossible in the context of redistricting. It is

[37] The district lines provided for in the 1974 plan for Kings County were vigorously opposed by representatives of the black and Puerto Rican communities on the ground, *inter alia*, that district lines could have been drawn resulting in a greater number of electoral districts with substantial black and Puerto Rican majorities (see App. 293–298). The Attorney General's Memorandum of Decision responded in part to minority-group complaints concerning the 1974 plan by noting that (App. 298): "In addition to the fact that the law does not require the state to 'maximize' minority voting strength through gerrymandering or other artificial devices, the facts in this case—particularly the geographical dispersion of Puerto Rican neighborhoods throughout Kings County—show that it is virtually impossible to draw a majority Puerto Rican congressional district. They show further that even a 30% Puerto Rican district is attainable only by considerable gerrymandering. In this regard, and with respect to complaints of both groups, we repeat the test defined by the courts is not whether districts still more favorable to minorities can be drawn but, rather, whether the districts as drawn have the effect of minimizing minority voting strength."

unrealistic to expect that those responsible for drafting or enacting plans of reapportionment could complete their work without becoming aware of at least the approximate racial and ethnic impact of possible redistricting plans, any more than such persons can realistically be expected to isolate themselves from knowledge of the political impact of their work—which may well tend to coincide with its racial and ethnic impact. As this Court observed in *Gaffney* v. *Cummings,* 412 U.S. 735, 753, a case involving use of political considerations in the redistricting process:

> District lines are rarely neutral phenomena. * * * The reality is that districting has and is intended to have substantial political consequences.
>
> It may be suggested that those who redistrict and reapportion should work with census, not political, data and achieve population equality without regard for political impact. But this politically mindless approach may produce, whether intended or not, the most grossly gerrymandered results; and, in any event, it is most unlikely that the political impact of such a plan would remain undiscovered by the time it was proposed or adopted, in which event the results would be both known and, if not changed, intended.

There is, accordingly, no constitutional requirement that redistricting necessarily, or even preferably, be accomplished by political eunuchs (see *Gaffney, supra,* 412 U.S. at 753–754)—even though the Constitution prohibits invidious governmental discrimination on the

basis of political association or belief (*Elrod* v. *Burns,* No. 74–1520, decided June 28, 1976; *Perry* v. *Sindermann,* 408 U.S. 593, 597–598).

These principles are no less applicable to consciousness of a redistricting's racial impact than to consciousness of its (sometimes largely coincident) political impact. As Mr. Justice White cogently observed in dissenting (on other grounds) in *Beer* v. *United States,* No. 73–1869, decided March 30, 1976 (slip op. at 2), "lawmakers are quite aware that the districts they create will have a white or a black majority; and with each new district comes the unavoidable choice as to the racial composition of the district."

Accordingly, the constitutional claims in the present case are largely answered by the Court's decision in *Gaffney* v. *Cummings, supra.* There, it was "frankly admitted by those who prepared the [state legislative districting] plan, that virtually every Senate and House district line was drawn with the conscious intent to create a districting plan that would achieve a rough approximation of the statewide political strengths of the Democratic and Republican Parties, the only two parties in the State large enough to elect legislators from discernible geographic areas" (412 U.S. at 752). Similarly, the plan here was designed to achieve a proportion of majority white and of majority non-white districts roughly approximating the proportion of each racial group in the countywide population. The constitutional permissibility of such a choice by a State in apportioning its legislature—at least where, as here, the plan's districts are con-

tiguous and reasonably compact and meet one person-one vote standards (see n. 41, *infra*)[38]—is, we submit, established by this Court's holding in *Gaffney* (412 U.S. at 754; emphasis added):

> * * * [J]udicial interest should be at its lowest ebb when a State purports fairly to allocate political power to the parties [races] in accordance with their voting strength and, within quite tolerable limits, succeeds in doing so. There is no doubt that there may be other reapportionment plans for Connecticut [Kings County] that would have different political [racial] consequences and that would also be constitutional. * * * But neither we nor the district courts have a constitutional warrant to invalidate a state plan, otherwise within tolerable population limits, because it undertakes, not to minimize or eliminate the political strength of *any group* or party, but to recognize it and, through districting, provide a rough sort of proportional representation in the legislative halls of the State.

It is thus manifest that, wholly apart from any consideration of the role of the Voting Rights Act in the present case, the 1974 plan violates no constitutional right of the petitioners.[39] Nor, we submit, can

[38] There is no claim that the 1974 plan is deficient in any of these respects, and the record indicates that there would be no basis for such a claim. See App. 102, 115, 173–174, 190–194; cf. App. 197–198.

[39] Cf. *Beer* v. *United States*, *supra*, in which this Court held that, in the absence of a finding of racially discriminatory purpose, a redistricting plan for the New Orleans city council, challenged on the ground that it needlessly divided concentrations of black voters among several majority-white districts, "does not remotely approach a violation of * * * constitutional standards * * *" (slip op., 12, n. 14).

this otherwise constitutionally permissible plan be rendered unconstitutional by the fact that the state authorities who adopted it may have been motivated, in whole or in part, by the applicability of the Voting Rights Act to Kings County. It would be a gross anomaly if the good faith desire of state officials to promote the policies of a federal statute, validly enacted to enforce the Fifteenth Amendment, were held to infect with invidious discrimination an otherwise wholly permissible state redistricting law.[40] To the contrary, this Court's decisions establish that, within proper limitations, governmental entities may take race into account both to ameliorate the effects of past discrimination and to prevent future discrimination. *E.g., Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 18; *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43, 45; *United States* v. *Montgomery County Board of Education*, 395 U.S. 225; accord, *e.g., Otero* v. *New York City Housing Authority*, 484 F. 2d 1122 (C.A. 2); *Gautreaux* v. *Romney*, 448 F. 2d 731 (C.A. 7); *Boston Chapter N.A.A.C.P.* v. *Beecher*, 504 F. 2d 1017 (C.A. 1); *Morrow* v. *Crisler*, 491 F. 2d 1053 (C.A. 5), certiorari denied, 419 U.S. 895. The teaching of these and similar cases is that governmental action involving

[40] Nor does the validity of the state enactment depend on whether all legislators who voted for it correctly conceived the requirements of the federal law or the Constitution. So long as the redistricting plan was, as here, objectively permissible and not adopted for the purpose of discriminating against the petitioners, they have no right to have it set aside. Cf. *City of Richmond* v. *United States*, 422 U.S. 358; *Washington* v. *Davis*, No. 74-1492, decided June 7, 1976.

a consciousness of race is not *per se* unlawful under either the Fourteenth or the Fifteenth Amendment. The question is whether invidious use is made of race—that is, in a voting rights case, whether race was used as a basis for denying the right to vote (*eg., Gomillion* v. *Lightfoot,* 364 U.S. 339), or was employed as part of a "contrivance to segregate" (*Wright* v. *Rockefeller,* 376 U.S. 52, 58), to minimize or cancel out the voting strength of a minority class or interest (*e.g., White* v. *Regester, supra,* 412 U.S. at 765–770; cf. *Whitcomb* v. *Chavis,* 403 U.S. 125, 143–144; *Burns* v. *Richardson,* 384 U.S. 73, 88; *Fortson* v. *Dorsey,* 379 U.S. 433, 439), or otherwise to impair or burden the opportunity of affected persons to participate in the political process (*e.g., Louisiana* v. *United States,* 380 U.S. 145, 151–153). Petitioners have made no such showing here.[41]

[41] Petitioners attempt to distinguish cases in which this Court and other courts have approved consciousness of race to remedy or avoid governmental actions that are racially discriminatory in effect by arguing that there are "no factual circumstances in the voting area, similar to that in public education or employment, where race-consciousness is necessary 'to undo the effects of past discrimination' or prevent its perpetuation. If an apportionment is or has been racially discriminatory, it may and should set aside, and a new apportionment—based on 'neutral' criteria—should replace it" (Pet. Br. 21). For the reasons already discussed, however, it is unrealistic to contend that legislative redistricting must be based solely on "neutral" criteria. But it is significant here, we submit, that the state's use of race-consciousness in adopting the 1974 plan did not prevent it from observing its normal "neutral" criteria for redistricting—contiguous, reasonably compact districts with minimal population variances (see n. 38, *supra*). The use of race-consciousness to override or substantially distort a state's normal neutral criteria for redistricting would present a different case, which need not be decided here.

Indeed, what petitioners seek, at bottom, in this litigation is not a redistricting plan for Kings County drawn without regard to racial impact, but a plan drawn with sufficient sensitivity to racial and ethnic impact to place the Hasidic Jewish community in Williamsburgh in a single state senate and assembly district. Petitioners quote with approval testimony concerning the conscious efforts of state officials to accomplish again precisely that result, as they had in the past (Pet. Br. 13–14; see also App. 7, 97.) Whether the division of petitioners' community is characterized as defective because of an asserted entitlement to "separate community recognition in the reapportionment process" (an assertion that petitioners disclaim (see Pet. Reply Br. 2)) or as evidencing a "distinct and legally cognizable injury" (an assertion upon which petitioners rely (see *id.* at 2–3, n. 2)), the fact remains that the relief petitioners seek involves no less consciousness of race than did development of the redistricting provisions challenged in this litigation.

C. PETITIONERS' CONSTITUTIONAL ARGUMENTS ALSO FAIL TO TAKE INTO ACCOUNT THE FACT THAT IN REDISTRICTING KINGS COUNTY THE STATE WAS REQUIRED TO COMPLY WITH SECTION 5 OF THE VOTING RIGHTS ACT

Petitioners' constitutional arguments also fail to recognize that those responsible for developing and enacting a reapportionment plan for Kings County could not close their eyes to racial impact and realistically hope at the same time to comply with Section 5 of the Voting Rights Act. As already noted, before implementing any change in existing voting practices

or procedures in the county, the State of New York was required to demonstrate that the change did not have the purpose and would not have the effect of abridging the right to vote on account of race. In determining whether the State had met this burden, the Attorney General was obligated by Section 5 of the Voting Rights Act to assess the impact of the 1974 plan in terms of the relative opportunities afforded minority-group members effectively to participate in the electoral process.[42]

In discussing the reach of the proscription contained in Section 5 against voting changes having a racially discriminatory effect, this Court in *Beer* v. *United States, supra,* slip op. at 10, relied in part upon Congress' admonition that Section 5 "can only be fully satisfied by determining * * * whether the ability of minority groups to participate in the political process and to elect their choices to office is augmented, diminished, or not affected by the change affecting voting * * * ." H.R. Rep. No. 94–196, 94th Cong., 2d Sess. 60 (1975). This Court has in fact consistently held that Section 5 is not concerned simply with the removal of direct impediments to the right to vote but encompasses as well changes in voting practices and procedures that have the potential for "dilu-

[42] See 28 C.F.R. 51.10(b)(5)–(6); see also *Georgia* v. *United States, supra,* 411 U.S. at 540.

tion of voting power." *E.g., Perkins* v. *Matthews, supra,* 400 U.S. at 390; *Allen* v. *State Board of Elections,* 393 U.S. 544, 569.

It has become increasingly apparent since the original enactment of the Voting Rights Act in 1965 that measures having the effect of diluting minority voting potential are quickly replacing more direct impediments to the right of members of minority groups to participate in the electoral process. As early as 1968 the United States Civil Rights Commission reported to Congress, after an eighteen-month study of the operation of the Voting Rights Act, that "[i]n areas where [minority] registration has increased, we have moved into a new phase of the problem [of disenfranchisement]."[43] The Commission found that political boundaries were being manipulated in an effort "to dilute the newly gained voting strength of Negroes."[44] The Commission's report explained that this was being achieved by dividing minority communities and placing the resulting fragments into predominantly white districts.[45] These findings were prominently and repeatedly referred to during the Senate and House hearings held in 1969 and 1970 in connection with

[43] *Political Participation*, A Report of the United States Commission on Civil Rights, p. 177 (1968).

[44] *Ibid.*

[45] *E.g., id.* at 26–30.

Congress' extension of the Voting Rights Act.[46] They were also discussed in both Houses during the floor debates preceding extension of the Act.[47]

During the deliberations that preceded Congress' decision in 1975 again to extend the Voting Rights Act, Congress was informed by the Civil Rights Commission that the use of redistricting measures having the effect of diluting minority voting strength had become "the most serious problem for minority voters" and that "[t]he greatest use of Section 5 has been in preventing such practices."[48] Congress was also informed that the Attorney General had interpreted Section 5 as requiring him to object to re-

[46] *E.g.*, Hearings on H.R. 4249, H.R. 5538, and Similar Proposals (Voting Rights Act Extension) before Subcommittee No. 5 of the House Committee on the Judiciary, 91st Cong., 1st Sess., pp. 3–4 (1969) (statement of Rep. McCulloch); *id.* at p. 17. (testimony of Howard Glickstein, Acting Staff Director, United States Commission on Civil Rights); *id.* at p. 150 (testimony of Thomas E. Harris, Associate General Counsel, AFL–CIO); Hearings on S. 818, S. 2456, etc. (Amendments to the Voting Rights Act of 1965) before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 91st Cong., 1st and 2d Sess., p. 47 (1969) (testimony of Frankie Freeman, Member, United States Commission on Civil Rights); *id.* at p. 132 (testimony of Joseph L. Rauh, Jr., General Counsel, Leadership Conference on Civil Rights); *id.* at 427 (statement of Howard Glickstein); *id.* at p. 518 (testimony of David Norman, Deputy Assistant Attorny General, Civil Rights Division, U.S. Dept. of Justice).

[47] *E.g.*, 115 Cong. Rec. 38486 (1969) (remarks of Rep. McCulloch); 116 Cong. Rec. 5520–5521 (1970) (statement of joint views of Senators Bayh, Burdick, Cook, Dodd, Fong, Hart, Kennedy, Mathias, Scott and Tydings); 116 Cong. Rec. 6358 (1970) (remarks of Senator Bayh).

[48] *The Voting Rights Act: Ten Years After*, A Report of the United States Commission on Civil Rights, p. 345 (1975).

districting measures submitted to him having the effect of minimizing the number of districts with predominantly non-white populations.[49] The Senate and House reports recommending the extension of the Act to 1982 specifically referred to these considerations, and expressed the hope that the Act would continue to be administered so as to increase the opportunities available to minority-group members for election to public office.[50]

As previously stated, it would be anomalous indeed were the good faith efforts of the State of New York to comply with the Voting Rights Act, by avoiding the enactment of a redistricting plan for Kings County having a racially discriminatory effect, held unconstitutional because those efforts involved a consciousness of ultimate racial impact. While it may have been theoretically possible for the State to have developed a redistricting plan for Kings County, complying with Section 5's effect standard, without hav-

[49] *E.g.*, Hearings on S. 407, S. 903, etc. (Extension of the Voting Rights Act of 1965) before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 94th Cong., 1st Sess., p. 553 (1975) (statement of J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, U.S. Dept. of Justice); *id.* at 1038 (statement of Howard Glickstein); Hearings on H.R. 939, H.R. 2148, etc. (Extension of the Voting Rights Act) before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, 94th Cong., 1st Sess., pp. 252, 262 (1975) (statement of J. Stanley Pottinger); see also *The Voting Rights Act: Ten Years After*, A Report of the United States Commission on Civil Rights, pp. 204–327 (1975).

[50] S. Rep. No. 94–295, 94th Cong., 1st Sess. 14 (1975); H.R. Rep. No. 94–196, 94th Cong., 1st Sess. 7 (1975).

ing considered the plan's racial impact prior to submitting it for federal preclearance, nothing in the Constitution required the State to adopt such a head-in-the-sand approach to its statutory and constitutional responsibilities.[51] This is well illustrated by the annexation cases that have reached this Court under Section 5.

In *City of Petersburg* v. *United States*, 354 F. Supp. 1021, a three-judge district court in the District of Columbia denied the city's request for a declaratory judgment under Section 5 after having found that the proposed annexation of a predominantly white area, combined with at-large councilmanic elections and racial voting, would effectively preclude black voters from electing a member of the minority community to the city council. The court retained jurisdiction over the case, however, and indicated that the annexation would be approved if the city were to "shift from an at-large to a ward system of electing its city councilmen" (*id.* at 1031). Thus, in order to gain approval of the annexation, the city was required to adopt a change in voting procedures having as its principal purpose the "neutrali[zation] to the extent

[51] In extending the Voting Rights Act for an additional seven years in 1975, Congress understood that jurisdictions subject to the Act would have to take race into account in order to avoid proposing voting changes that would have a racially discriminatory effect if implemented. *E.g.*, Hearings on S. 407, S. 903, etc. (Extension of the Voting Rights Act of 1965) before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 94th Cong., 1st. Sess., p. 1039 (1975).

possible [of] any adverse effect upon the political participation of black voters" (*ibid.*). This Court affirmed the district court's decision (410 U.S. 962).

This Court was again confronted with a challenge to the permissibility under Section 5 of the annexation of a predominantly white area, altering the racial composition of a jurisdiction subjection to the Voting Rights Act, in *City of Richmond* v. *United States*, 422 U.S. 358, The Attorney General had originally objected to the annexation on the ground that the voting strength of black voters in Richmond would have been reduced in the at-large city council elections. The Attorney General suggested, however, that the city might cure this effect, prohibited by Section 5, by adopting single-member districts to replace the existing at-large arrangement. The city subsequently adopted that suggestion, and this Court, reiterating that "*Petersburg* was correctly decided" (422 U.S. at 370), held that the resulting single-member districts effectively remedied the problems that had concerned the Attorney General (422 U.S. at 367–372).

Thus, both *City of Petersburg* and *City of Richmond* involved voting changes made or recommended with a consciousness of race to avoid adversely affecting the voting strength of minority voters. In both cases, such remedial race-consciousness was approved by this Court. Since the 1974 redistricting plan for Kings County was neither "conceived [n]or operated as [a] purposeful [device] to further racial discrimination" (*Whitcomb* v. *Chavis, supra,* 403 U.S. at 149)

and, as discussed earlier, the plan is not racially discriminatory in effect, petitioners' challenges to the plan were correctly rejected.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

The racial composition of the state senate and assembly districts provided for in the 1972 and 1974 plans for Kings County are as follows:

District	Total population in district [c]	1972 plan [a] Percent Negro & Puerto Rican [d]	1974 plan [b] Percent Negro & Puerto Rican [d]
Senate:			
15 (portion within Kings County)	(17,523)	(.9)	
whole	304,005	1.0	
16	304,004	52.7	
17	304,002	33.9	76.7
18	304,004	90.3	71.6
19	304,004	17.9	
20	304,002	.9	
21	304,001	9.1	
22	304,000	5.2	
23	304,001	35.4	69.8
25 (portion within Kings County)	(152,471)	(82.7)	(33.4)
whole	304,001	61.0	36.2
Assembly:			
38 (portion within Kings County)	(65,884)	(36.1)	
whole	120,768	19.9	
39	120,767	15.4	
40	120,769	75.7	75.7
41	120,767	21.0	
42	120,767	1.1	
43	120,767	29.3	
44	120,768	24.6	
45	120,769	.9	
46	120,769	9.3	
47	120,767	.4	
48	120,768	2.3	
49	120,769	1.0	

District	Total population in district [c]	1972 plan [a] Percent Negro & Puerto Rican [d]	1974 plan [b] Percent Negro & Puerto Rican [d]
50	120, 768	11. 9	----------
51	120, 767	12. 2	----------
52	120, 768	29. 5	----------
53	120, 769	86. 1	84. 1
54	120, 769	85. 9	85. 9
55	120, 768	92. 4	80. 9
56	120, 769	92. 5	87. 7
57	120, 768	59. 5	63. 2
58	120, 768	31. 9	----------
59	120, 768	51. 9	67. 3

NOTES

[a] The State of New York supplied two sets of statistics in connection with the submission of its 1972 reapportionment plans to the Attorney General. The figures set forth above concerning the 1972 plan are derived from the second set of statistics submitted by the State (App. 252–255), which were relied upon by the Attorney General in reviewing the 1972 plans (see App. 294). The second set of statistics resulted from application of a formula designed to alleviate apparent errors in the 1970 census data concerning the number of Puerto Ricans living in New York City (see App. 267–268).

[b] The State did not supply statistics for the state senate and assembly districts provided for by the 1974 plan for Kings County, except as indicated above (see App. 195–196; Pl. Exh. 3).

[c] See App. 248–256.

[d] These figures represent only the percentage of Negroes and Puerto Ricans in the total population in the various districts. The Attorney General did not receive any submissions suggesting that the voting rights of persons in Kings County other than blacks and Puerto Ricans would be abridged in the event the 1972 plan were implemented. In no electoral district in Kings County do non-whites, other than blacks and Puerto Ricans, account for more than 2 percent of the total population (see App. 252–255).

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